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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
8

9 Todd Burch, ) CV 11-02309-PHX-FJM

10 Plaintiff, ) **ORDER**

11 vs. )

12 National Credit Union Administration in )  
13 its capacity as conservator for AEA )  
Federal Credit Union, )

14 Defendant. )  
15 )

16 National Credit Union Administration in )  
17 its capacity as conservator for AEA )  
Federal Credit Union, )

18 Counterclaimant, )  
19 )

19 vs. )

20 Todd Burch, individually and as a marital )  
21 community with Jennifer Burch, )

22 Counterdefendants. )  
23 )

24 We have before us the the National Credit Union Administration's ("NCUA") motion  
25 for summary judgment on count two of counterclaim (doc. 38) and separate statement of  
26 facts (doc. 39). Plaintiff/counterdefendant Todd Burch did not respond, and the time for  
27 responding has expired.

28 This action arises from loans made to Burch by AEA Federal Credit Union ("AEA"),

1 which was placed into a conservatorship by the NCUA in 2010. The loans were made in  
2 connection with a number of properties Burch was developing. On February 1, 2012, Burch  
3 recorded three notices of lis pendens relating to several of these properties. AEA purchased  
4 the properties described in the three lis pendens at trustee's sales on February 2, 2012.

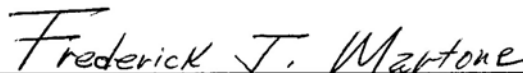
5 Burch's complaint, filed in September 2011, asserted claims for fraudulent  
6 misrepresentation, breach of the implied covenant of good faith and fair dealing, and  
7 defamation. DSOF, ex. A. The NCUA filed a counterclaim on March 1, 2012, seeking (1)  
8 an injunction requiring plaintiff to release each lis pendens, and (2) damages under A.R.S.  
9 § 33-420(A) (doc. 15).<sup>1</sup>

10 The NCUA now moves for summary judgment on its counterclaim for damages,  
11 requesting statutory damages of \$15,000. Because no response was filed, we construe the  
12 lack of a response as a concession and grant the motion summarily. See LRCiv 7.2(i) ("if  
13 . . . counsel does not serve and file the required answering memoranda. . . such non-  
14 compliance may be deemed a consent to the denial or granting of the motion and the Court  
15 may dispose of the motion summarily").

16 **IT IS ORDERED GRANTING** the NCUA's motion for summary judgment on count  
17 two of counterclaim (doc. 38). The Clerk shall enter judgment for the NCUA on its  
18 counterclaim for damages under A.R.S. § 33-420(A) in the amount of \$15,000.

19 All the claims of all the parties having been resolved, this action is terminated.

20 DATED this 3<sup>rd</sup> day of July, 2012.

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23 Frederick J. Martone  
24 United States District Judge  
25

26  
27 <sup>1</sup> Burch recorded releases for all three lis pendens on February 27, 2012. Accordingly,  
28 we dismissed the NCUA's request for injunctive relief as moot (doc. 21).